

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	
HISPANIC INFORMATION AND	)	
TELECOMMUNICATIONS NETWORK, INC.	)	File No. BPLIF-19950215DQ and
	)	BPLIF-19950322DY
For Authority to Construct New Instructional	)	
Television Fixed Service Station On the B and D	)	
Group Channels, Jayuya, Puerto Rico	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 9, 2003**

**Released: June 12, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Memorandum Opinion and Order*, we address a petition to deny filed on July 7, 1995, by the University System of the Ana Mendez Educational Foundation (Mendez).<sup>1</sup> Mendez seeks denial of applications<sup>2</sup> filed by Hispanic Information and Telecommunications Network, Inc. (HITN) for authority to construct new Instructional Television Fixed Service (ITFS) stations at Jayuya, Puerto Rico. For the reasons stated below, we deny Mendez's petition to deny.

2. *Background.* On February 15 and March 22, 1995, HITN filed applications for new ITFS stations on the B and D Group channels at Jayuya, Puerto Rico.<sup>3</sup> The applications appeared on Public Notice as accepted for filing on April 26, 1995.<sup>4</sup> The applications were subsequently amended on May 1, 1995, to replace Section VI of originally filed FCC Form 330 and on September 15, 1995, to provide an Airtime Lease Agreement.<sup>5</sup> Subsequently, on September 15, 1995, HITN amended its applications by requesting a protected service area and requesting authority to employ digital modulation.<sup>6</sup>

3. On July 7, 1995, Mendez filed a Consolidated Petition to Deny against HITN's B and D Group applications at both Jayuya and Maricao, Puerto Rico.<sup>7</sup> Mendez is the licensee of ITFS Station

<sup>1</sup> Consolidated Petition to Deny (filed Jul. 7, 1995) (Petition).

<sup>2</sup> Applications for New ITFS Stations at Jayuya, Puerto Rico, File Nos. BPLIF-19950215DQ, Facility ID No. 27269 (filed February 15, 1995) and BPLIF-19950322DY, Facility ID No. 27384 (filed March 22, 1995) (Jayuya Applications).

<sup>3</sup> *Id.*

<sup>4</sup> See ITFS Public Notice Report No. A-35 (rel. Apr. 26, 1995).

<sup>5</sup> Amendments (filed May 1, 1995).

<sup>6</sup> Amendments (filed Sep. 15, 1995).

<sup>7</sup> Petition (filed July 7, 1995). The portion of the Petition addressing the Maricao, Puerto Rico applications (File Nos. BPLIF-19950215DR and BPLIF-19950316DF) was denied. See Letter from Clay C. Pendarvis, Acting Chief, Distribution Services Branch, Video Service Division, Mass Media Bureau, Federal Communications Commission to HITN, Jose Luis Rodriguez, Pres. HITN and Todd D. Gray, Esq. (Dec. 5, 2000) (Maricao Letter). On Dec. 7, 2000, HITN's Maricao applications were granted. See ITFS Public Notice Report No. 266 (rel. Dec. 12, 2000). That grant has become final.

WLX663, Aguadilla, Puerto Rico. HITN opposed Mendez's Petition on July 31, 1995.<sup>8</sup> Mendez filed a Consolidated Reply on August 10, 1995.<sup>9</sup> On August 22, 1995, HITN filed a pleading entitled "Comments on Consolidated Reply."<sup>10</sup>

4. *Discussion.* Mendez argues that the HITN applications are defective because they did not provide adequate interference protection to the R-4 receive site of Mendez's ITFS Station WLX663.<sup>11</sup> Mendez also provided an engineering statement claiming that HITN inappropriately relied on a frequency offset proposal in its applications.<sup>12</sup> In response, HITN claims that it should not be required to protect the R-4 receive site because that receive site is over 40 miles away from the transmitter site of Station WLX663 and because there allegedly is terrain blockage between Station WLX663's transmitter site and the R-4 receive site.<sup>13</sup> HITN argues in the alternative that the receive site could be modified to eliminate any interference by changing the polarization of the Station WLX663 transmit and receive antennas from vertical to horizontal.<sup>14</sup> HITN claims that this change in polarization would provide the necessary rejection of the undesired signal, thus allowing sufficient separation between the two signals to meet the 0 db desired-to-undesired (D/U) adjacent channel standard.<sup>15</sup> HITN expressed its willingness to pay the costs of the polarization change.<sup>16</sup> Mendez countered HITN's terrain blockage claim by stating that the R-4 receive site is in regular use.<sup>17</sup> Mendez expressed its willingness to work with HITN "so long as the solution yields an equivalent path performance at R-4 and so long as HITN bears the associated costs."<sup>18</sup> In its comments, HITN states that it is willing to accept a condition on its authorization requiring protection of the Mendez R-4 receive site.<sup>19</sup>

5. After reviewing the comments and interference showings of both HITN and Mendez, it appears that the only controversy between the parties involves the R-4 receive site of Station WLX663. We first conclude that HITN must provide interference protection to the R-4 receive site. The R-4 receive site is located 40.9 miles from Stations WLX663's transmitter site. Section 74.903(a)(5) of the Commission's Rules provides that no receive site more than 35 miles from the transmitter shall be entitled to interference protection.<sup>20</sup> However, in establishing that rule, the Commission ruled that receive sites more than 35 miles from their associated transmitter, and registered as of September 17, 1998, would continue to receive protection; and that applicants for new or modified Multipoint Distribution Service

<sup>8</sup> Opposition to Consolidated Petition to Deny (filed Jul. 31, 1995) (Opposition).

<sup>9</sup> Mendez Consolidated Reply (filed Aug. 10, 1995) (Reply).

<sup>10</sup> HITN's comments on the Reply are not an authorized pleading. See 47 C.F.R. § 1.45. However, because the comments provide information that will be helpful in resolving this proceeding, we will waive the pleading limitations of Section 1.45 on our own motion and consider HITN's comments. See Applications for renewal of License of Certain Broadcast Stations Serving Melbourne, Florida and Other Communities in the Florida Area, *Memorandum Opinion and Order and Notice of Apparent Liability*, 5 FCC Rcd 6738 n.1 (1990).

<sup>11</sup> Petition at 3. That receive site is located at coordinates 18°-10'-10' N. Lat, 66°-34'-36' W. Long.

<sup>12</sup> Petition, Engineering Exhibit E-3.

<sup>13</sup> Opposition at 2-3 and Exhibit 1 (Engineering Statement) at 1-2.

<sup>14</sup> Opposition at 3 and Exhibit 1 at 2.

<sup>15</sup> 47 C.F.R. §§ 74.903(a)(5).

<sup>16</sup> *Id.*

<sup>17</sup> Reply at 2.

<sup>18</sup> *Id.* at 3. See also Petition at 3 n.3.

<sup>19</sup> Comments at 2.

<sup>20</sup> 47 C.F.R. § 74.903(a)(5).

(MDS) or ITFS stations are required to demonstrate protection of such sites.<sup>21</sup> Our records show that the R-4 receive site was part of Mendez's original application, which was granted on September 16, 1992.<sup>22</sup> On May 8, 1996, Mendez filed with the Commission a notice certifying the completion of construction of Station WLX663 as authorized by BPIF-19920303DC.<sup>23</sup> Accordingly, we find that the R-4 receive site is entitled to interference protection.

6. The Commission's Rules require an applicant to engineer its system to provide at least 0 dB of adjacent channel interference protection to all receive sites of all other authorized or previously proposed stations entitled to protection.<sup>24</sup> Mendez and HITN agree that modifications to the R-4 receive site would be necessary in order for HITN to provide the necessary level of interference protection.<sup>25</sup> Section 74.903(a)(4) of the Commission's Rules states that if an applicant can demonstrate that the installation of a new antenna at a receive site will allow the applicant to provide service without interference to the existing licensee, the application can be granted with a condition requiring the applicant to bear all costs of the upgrade.<sup>26</sup> HITN has agreed to pay all costs associated with providing the necessary interference protection, including (if necessary) installing alternate microwave equipment.<sup>27</sup> Mendez has agreed to the HITN proposal contingent on equivalent performance of the Mendez R-4 receive site once the polarization change has been accomplished; and contingent on HITN paying for the cost thereof. Because these mutual undertakings of the parties resolve all outstanding issues in this matter and are consistent with the provisions of Section 74.903 of the Commission's Rules,<sup>28</sup> we are denying the Mendez Petition to Deny. However, grant of the HITN Jayuya Applications<sup>29</sup> will be conditioned on HITN instituting, and paying for, all changes necessary to eliminate interference, if any, caused to the Mendez R-4 receive site by the proposed Jayuya facilities.<sup>30</sup>

<sup>21</sup> Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order on Reconsideration*, 14 FCC Rcd 12764, 12774 ¶ 21 (1999).

<sup>22</sup> File No. BPIF-19920303DC.

<sup>23</sup> File No. BCIF-19960508AAA.

<sup>24</sup> 47 C.F.R. §§ 74.903(a)(2)(i), (b)(1). Because it is potential adjacent channel – rather than co-channel – interference that is at issue here, Mendez was correct in claiming that HITN improperly relied on the interference-reducing properties of precision frequency offset when it attempted to show that interference would not occur to Mendez R-4 receive site. The benefits of frequency offset accrue only in the case of co-channel stations. *See, e.g.*, Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Fixed Service Licensees to Engage in Fixed Two-Way Transmissions; Request For Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, MM Docket No. 97-217, *Report and Order on Reconsideration*, 14 FCC Rcd 12674, 12798 (1999). In any event, even were the stations operated on the same channel, the fact that digital modulation was used by HITN would foreclose any meaningful benefits from frequency offset. *Id.* Given our disposition of this matter, however, the frequency offset issue is moot.

<sup>25</sup> Petition at Exhibit E-3, Opposition at Exhibit A, p. 2.

<sup>26</sup> 47 C.F.R. § 74.903(a)(4).

<sup>27</sup> *See Comments.*

<sup>28</sup> 47 C.F.R. § 74.903.

<sup>29</sup> The Maricao applications received similar conditions. *See* BPLIF-19950215DR and BPLIF-19950316DF (Special Operating Conditions and Restrictions No. 7).

<sup>30</sup> Authorizations for both HITN application File Nos. BPLIF-19950215DQ and BPLIF-19950322DY shall be conditioned to read: "Any interference resulting from the operation of this facility to the R-4 receive site of ITFS station WLX663, licensed to the University System of the Ana Mendez Educational Foundation, shall be resolved by Hispanic Information and Telecommunications Network, Inc. (HITN) consistent with the Comments on Consolidated Reply filed by HITN on August 22, 1995."

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 74.912 of the Commission's Rules, 47 C.F.R. § 74.912, that the Consolidated Petition to Deny filed by the University System of the Ana Mendez Educational Foundation on July 7, 1995, IS DENIED.

8. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 74.903 and 74.912 of the Commission's rules, 47 C.F.R. §§ 74.903, 74.912, that the Licensing and Technical Analysis Branch SHALL PROCESS HITN's applications with the condition specified in footnote 30 hereof.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau